

1 DANIEL M. PETROCELLI (SB # 97802)

dpetrocelli@omm.com

2 JEFFREY A. BARKER (S.B. #166327)

jbarker@omm.com

3 AMY R. LUCAS (S.B. #264034)

alucas@omm.com

4 O'MELVENY & MYERS LLP

1999 Avenue of the Stars

5 8th Floor

Los Angeles, California 90067-6035

6 Telephone: (310) 553-6700

7 Facsimile: (310) 246-6779

8 Attorneys for Plaintiffs Skechers U.S.A., Inc.  
and Skechers U.S.A., Inc. II

9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13  
14 SKECHERS U.S.A., INC. and  
SKECHERS U.S.A., INC. II,

15 Plaintiffs,

16 v.

17 BROOKS SPORTS, INC.,

18 Defendant.

Case No.

**COMPLAINT FOR**

- 19 (1) **FEDERAL TRADEMARK**  
20 **INFRINGEMENT, 15 U.S.C.**  
21 **§ 1125(A)**  
22 (2) **WILLFUL INFRINGEMENT**  
23 **OF REGISTERED MARK , 15**  
24 **U.S.C. § 1114**  
25 (3) **FEDERAL UNFAIR**  
26 **COMPETITION, 15 U.S.C. §**  
27 **1125(A)**  
28 (4) **FEDERAL TRADEMARK**  
**DILUTION, 15 U.S.C. §**  
**1125(C);**  
(5) **STATE TRADEMARK**  
**DILUTION & INJURY TO**  
**BUSINESS REPUTATION;**  
(6) **STATE UNFAIR AND**  
**DECEPTIVE PRACTICES**  
(7) **COMMON LAW TRADEMARK**  
**INFRINGEMENT AND UNFAIR**  
**COMPETITION**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs SKECHERS U.S.A., INC. and SKECHERS U.S.A., INC. II  
 2 (collectively, “Skechers”) bring this action against defendant BROOKS SPORTS,  
 3 INC. (“Brooks”) to address Brooks’ abuse of Skechers’ legally protected and  
 4 federally registered and unregistered trademarks, and allege as follows:

### 5 NATURE OF THE ACTION

6 1. For 30 years, Skechers has designed and sold quality, affordable and  
 7 stylish shoes for men, women and children. A publicly traded company, Skechers  
 8 distributes its products throughout the United States and in more than 170 countries  
 9 by way of more than 4,300 Skechers retail stores, Skechers’ e-commerce websites,  
 10 and third-party department and specialty stores. Among its many products,  
 11 Skechers produces high-performance athletic footwear and has become a world  
 12 leader in designing cutting edge products, particularly for use in running.

13 2. Over the years, Skechers has invested and spent hundreds of millions  
 14 of dollars creating and promoting its brand, including various versions of its famous  
 15 stylized “S” mark, to which Skechers has exclusive, incontestable rights. In  
 16 particular, Skechers is well known for using marks such as these on its footwear:



20 3. Defendant Brooks manufactures and sells athletic footwear. Brooks  
 21 has used a variety of fonts over time on its footwear. But, despite Brooks’  
 22 awareness of Skechers’ marks, including the stylized “S” mark used on Skechers’  
 23 running footwear, Brooks is using the following confusingly similar mark that  
 24 purports to be a stylized number “5” on versions of its athletic footwear:



4. Further adding to likely consumer confusion, Brooks places its stylized “5” mark on the top of the tongue of its shoe and in a location separate from any other markings, just as many Skechers shoes also display the Skechers “S” mark or Skechers’ name.



5. Brooks’ stylized “5” mark is substantially identical to many of Skechers’ “S” marks and is used on similar products marketed to the same consumers, making it highly likely that consumers will be confused as to whether Skechers is responsible for, distributes, has authorized or licensed, or is otherwise involved with the shoes Brooks sells. Moreover, Brooks’ unauthorized use of a mark that is substantially similar to Skechers’ dilutes the distinctiveness of Skechers’ famous “S” marks, in violation of both federal and state law.

6. Courts in Germany have already ordered Brooks to cease and desist its infringing uses of the confusingly similar “5” mark. Nevertheless, despite repeated demands, Brooks has refused to alter course in the United States, and has persisted in its infringing and dilutive activities. Accordingly, Skechers brings this suit to enforce its rights and protect its valuable trademarks and associated goodwill.

### THE PARTIES

7. Plaintiff Skechers U.S.A., Inc. is a corporation duly organized and existing under the laws of the State of Delaware with a principal place of business located at 228 Manhattan Beach Blvd., Manhattan Beach, California 90266.

8. Plaintiff Skechers U.S.A., Inc. II is a corporation duly organized and existing under the laws of the State of Virginia with a principal place of business

1 located at 228 Manhattan Beach Blvd., Manhattan Beach, California 90266.

2 Skechers U.S.A., Inc. II is a wholly-owned subsidiary of Skechers U.S.A., Inc.

3 9. On information and belief, defendant Brooks Sports, Inc. (“Brooks”) is  
4 a corporation duly organized and existing under the laws of the State of Washington  
5 with a principal place of business located at 3400 Stone Way North, 5th Floor,  
6 Seattle, Washington 98103.

### 7 JURISDICTION AND VENUE

8 10. Jurisdiction in this Court exists under the provisions of section 39 of  
9 the Lanham Act, 15 U.S.C. § 1121(a), 28 U.S.C. § 1331 (federal question), and 28  
10 U.S.C. § 1338(a) (any Act of Congress relating to patents or trademarks). Subject  
11 matter jurisdiction over Skechers’ related state and common law claims is proper  
12 pursuant to 28 U.S.C. § 1338 (action asserting claim for unfair competition joined  
13 with a substantial and related claim under trademark laws) and 28 U.S.C. § 1367  
14 (supplemental jurisdiction).

15 11. This Court has personal jurisdiction over Defendant because, upon  
16 information and belief, Brooks has (a) knowingly and purposefully marketed,  
17 distributed, offered for sale, and sold the Infringing Footwear identified herein to  
18 persons within the State of California and this District; (b) regularly distributes its  
19 products through multiple sales outlets in the State of California and this District;  
20 and (c) otherwise made or established contacts and regularly conducts or solicits  
21 business in the State of California and this District.

22 12. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a  
23 substantial part of the claims arose in this District.

### 24 FACTUAL ALLEGATIONS





#### 25 **Skechers and Its Famous “S” Logo**




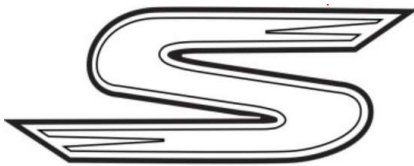
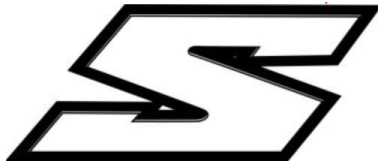

26 13. Skechers is a multi-billion dollar global leader in the lifestyle and  
27 performance footwear industry. Starting from a single footwear line in 1992,  
28 Skechers now boasts a collection of more than 3,000 footwear styles. Skechers’

1 products are sold in more than 170 countries and territories globally through a  
2 global network of distributors and subsidiaries.

3 14. For decades, Skechers has manufactured, advertised, marketed, and  
4 sold footwear with its famous and distinctive stylized “S” trademarks (collectively,  
5 the “‘S’ Marks”). Skechers owns and uses many federally registered and  
6 unregistered “S” Marks for its footwear, including the federal registrations listed  
7 below and attached hereto as Exhibits A through J.

8 15. Skechers is the owner of at least 40 federally registered trademarks  
9 bearing its “S” Marks. These marks are registered for use on a variety of  
10 platforms and products, including e-commerce, apparel, handbags, footwear, and  
11 more. Many have become incontestable pursuant to 15 U.S.C. § 1065. Examples  
12 of such marks registered for use on footwear are below:

Serial #	Registration #	Mark
87981990	5904316	
88201522	5916493	
86976296	4741038	
85464637	4247243	

1	88201496	6251908	
2			
3	88201575	6251913	
4			
5	88201566	6251912	
6			
7	88201562	6251911	
8			
9	88201550	6251910	
10			
11	88201509	6251909	
12			

16. Skechers also owns Registration No. 3998272, issued July 19, 2011, which has become incontestable, for its corporate name, which it has regularly and consistently presented to the public for over five years in the following font as its



logo on its retail stores, website, promotional and marketing materials, packaging, and on its clothing and footwear products (the “Skechers Mark”):

***SKECHERS***<sup>®</sup>

The federal registration for the Skechers Mark is attached hereto as Exhibit K.

17. Skechers also has developed, and has used in commerce in the United States for many years, numerous executions of its “S” Marks, including but not limited to those shown below (which often include the Skechers Mark in the stylized font presented above). Due to the substantial advertising and sales of Skechers’ products, these executions have become closely associated in the minds of consumers with the Skechers brand when used on footwear:





18. Skechers has invested hundreds of millions of dollars in continuous and longstanding promotion of its marks, including its “S” Marks and the Skechers



1 Mark. This long-term investment has built brand recognition and goodwill and,  
 2 along with Skechers' substantial worldwide sales, has caused consumers to  
 3 associate the "S" Marks and the Skechers Mark solely with Skechers as the source  
 4 of the goods it provides. As a result, the "S" Marks and the Skechers Mark have  
 5 become distinctive and famous within the meaning of 15 U.S.C. § 1125(c).

6 19. The public, including the media immediately recognize and associate  
 7 the "S" Marks and the Skechers Mark with Skechers. For example, in an April 22,  
 8 2022 article entitled "The 7 Best Skechers Running Shoes," the well-known  
 9 publication *Runner's World* described Skechers' products using the subtitle: "Same  
 10 'S' logo. New PR-worthy shoes. ICYMI, Skechers has become a major player in  
 11 the running industry."



## Use of the “S” Marks on Skechers Shoes

20. The “S” Marks appear prominently on all of Skechers’ performance products, including its GoRun lines of running shoes, GoWalk lines of walking shoes, GoGolf lines of golfing footwear, and many other products.

21. Certain performance products—including the GoRun Horizon Vanish 2, the GoRun Razor Excess, and the GoRun Speed Elite—feature the “S” Marks on the tongue as well as on the sides of the shoes:

### GOrun Razor Excess



### GOrun Horizon – Vanish 2



## GOrun Speed Elite



22. The “S” Marks are also prominently featured by Skechers in its advertising campaigns. For example:

**SKECHERS**  
**GORUN**  
RAZOR EXCESS™

**SKECHERS**  
*hyper burst*  
CUSHIONING

HYPER BURST® IS A NEW MIDSOLE FOAM CREATED USING A 'SUPER CRITICAL' PROCESS. THE PROCESS CREATES AN EXTREMELY LIGHTWEIGHT AND RESILIENT MATERIAL FOR LONG-WEARING DURABILITY AND RESPONSIVENESS.

**GOODYEAR**  
PERFORMANCE OUTSOLES

**SKECHERS GORUN**  
**RAZOR EXCESS IS THE NEXT**  
**GENERATION OF THE THREE-TIME**  
**AWARD WINNER GORUN RAZOR 3.**

Goodyear (and Winged Foot Design) and Blimp Design are trademarks of The Goodyear Tire & Rubber Company used under license by Skechers USA, Inc., Hawthorne, CA. Copyright 2022 The Goodyear Tire & Rubber Company. This or any footwear cannot completely eliminate the risk of slipping.

**SKECHERS.COM**





### **Widespread Recognition of Skechers' Running Shoes**

23. In the last decade, Skechers and its footwear products have been recognized with over one hundred awards from leading publications and organizations, including scores of awards and recognition for the high quality of its running shoes. For example, the Skechers GOrun Razor TRL recently made the *Runner's World* 2022 list of Best Trail Running Shoes and the *Sports Illustrated* list of Best Running Shoes in 2022. *Men's Health* included the GOrun Ride 9 on its 2022 list of the 18 Best Pairs of Running Shoes for Men.

24. Skechers' athletic footwear also has received significant attention and publicity from major publications focused on running and walking. For example, a full-page spread in the May 2022 issue of *Runner's World* Magazine celebrated the GoRun Razor Excess 2. That article included the below photo, again prominently featuring the "S" Mark:



### **Brooks and Its Infringing and Dilutive Products**

25. Upon information and belief, defendant Brooks manufactures, advertises, markets, and sells athletic footwear, typically designating its products with style name and occasionally a generation number.

26. In the past, Brooks has used a variety of different fonts to label its products, including the following that represent the number “5” in ways that do not mimic and are not confusingly similar to an “S”:



27. However, for a number of recent styles—including but not limited to the “Levitate 5,” the “Levitate GTS 5,” the “Levitate StealthFit 5,” the “Levitate StealthFit 5 GTS,” the “Revel 5,” and the “Caldera 5” (collectively, the “Infringing Footwear”)—Brooks changed the fonts it had used in the past and instead has adopted an italicized “5” that is virtually indistinguishable from Skechers’ well-known “S” Marks and the font used in the Skechers Mark. Brooks even features this new mark on a tab near the shoe’s tongue (the “Brooks ‘5’ Mark”) that is separate from the shoe’s style name or other markings, as pictured below:



Levitate GTS 5



Levitate 5



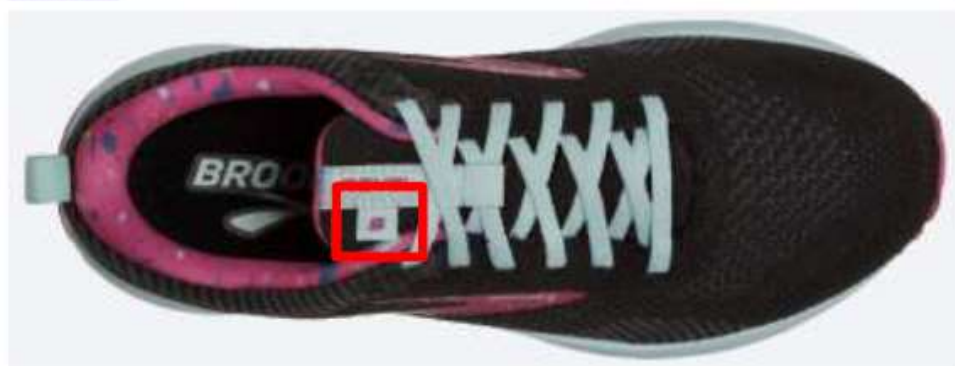
Caldera 5



1 Levitate StealthFit 5



8  
9  
10 Revel 5



17  
18 Levitate StealthFit GTS 5



1           28. On information and belief, Brooks is selling and, absent intervention  
2 and an injunction issuing from this Court, plans to continue to sell footwear bearing  
3 the Brooks “5” Mark not only for its existing inventory of shoes, but also for future  
4 lines of fifth generation shoes.

5           **Notification of Infringement and Brooks’ Refusal to Cease and Desist**

6           29. On or about February 23, 2022, upon becoming aware of the Brooks  
7 “5” Mark’s existence in the United States, counsel for Skechers contacted counsel  
8 for Brooks and demanded that Brooks immediately and permanently cease and  
9 desist from using the infringing Brooks “5” Mark. On or about March 29, 2022,  
10 Brooks denied that the Brooks “5” Mark infringes the Skechers “S” Mark.

11           30. Thereafter, Skechers became aware that Brooks and/or its affiliates  
12 were also selling the Infringing Footwear in the European Union. On or about  
13 April 26, 2022, Skechers sought and obtained an EU-wide preliminary injunction  
14 from the Dusseldorf Regional Court in Germany enjoining Brooks from importing,  
15 exporting, advertising, or selling any products with the infringing “5” Mark.

16           31. Specifically, the German court found that “there is thus a substantial  
17 likelihood of confusion between” the Skechers “S” Marks and the infringing “5”  
18 Mark, based on the “identity between the goods ‘shoe’” and the “high degree of  
19 similarity between the signs, which are both characterized by a black filled-in sign  
20 that runs parallel horizontally in the upper and lower areas and has a right-hand  
21 curve in the lower right.” Landgericht Dusseldorf [Dusseldorf Regional Court]  
22 Apr. 26, 2022, 34 O 57/22, 6 (Ger.).

23           32. Notwithstanding the German court’s preliminary injunction order,  
24 Brooks’ affiliate in Europe, Brooks Sports B.V., continued to sell the Infringing  
25 Footwear in the E.U., requiring Skechers to seek a second injunction against  
26 Brooks Sports B.V. and its European warehousing and distribution partners.

27           33. On or about June 2, 2022, the Dusseldorf Regional Court issued an  
28 order enjoining Brooks from continuing to infringe the “S” Mark. Landgericht

1 Dusseldorf [Dusseldorf Regional Court] June 2, 2022, 34 O 57/22, 6 (Ger.). On or  
2 about June 15, 2022, the German court issued a seizure order against Brooks’  
3 European warehousing and distribution partners. Landgericht Dusseldorf  
4 [Dusseldorf Regional Court] June 15, 2022, 34 O 57/22, 6 (Ger.).

5 **Brooks’ Continuing and Willful Infringement**

6 34. Upon information and belief, Brooks’ conduct both in the United  
7 States and abroad demonstrates its willful intent to infringe the “S” Marks and the  
8 Skechers Mark notwithstanding the likely consumer confusion and harm to  
9 Skechers, Skechers’ reputation and goodwill, and the valuable “S” Marks and  
10 Skechers Mark. Upon further information and belief, absent intervention from this  
11 Court, Brooks intends to continue to compound its wrongful conduct described  
12 herein.

13 **FIRST CAUSE OF ACTION**

14 **(Federal Trademark Infringement – Lanham Act § 43(a), 15 U.S.C. § 1125(a))**

15 35. Skechers hereby incorporates by reference the above allegations to this  
16 complaint as if set forth fully herein.

17 36. Brooks has used marks confusingly similar to Skechers’ federally  
18 registered marks and unregistered marks in violation of 15 U.S.C. §§ 1114 and  
19 1125(a). Brooks’ use of confusingly similar imitations of the registered and  
20 unregistered Skechers “S” Marks (including the “S” characters of the Skechers  
21 Mark) is likely to cause confusion, deception, and mistake by creating the false and  
22 misleading impression that Brooks’ goods are manufactured or distributed by  
23 Skechers, are associated or connected with Skechers, or have the sponsorship,  
24 endorsement or approval of Skechers.

25 37. Brooks’ activities have caused and, unless enjoined by this Court, will  
26 continue to cause a likelihood of confusion and deception of members of the trade  
27 and public, and, additionally, injury to Skechers’ goodwill and reputation as  
28

1 symbolized by its exclusive use of the Skechers “S” Marks and the Skechers Mark,  
2 for which Skechers has no adequate remedy at law.

3 38. Upon information and belief, and as demonstrated by Brooks’ conduct  
4 as described herein, Brooks’ misappropriation and infringement of the Skechers “S”  
5 Marks and Skechers Mark was and is a willful, intentional, and malicious effort to  
6 trade on and diminish the goodwill associated with the Skechers “S” Marks and the  
7 Skechers Mark to Skechers’ great and irreparable harm.

8 39. Brooks has caused and, unless restrained by this Court, is likely to  
9 continue causing substantial injury to the public and to Skechers. Accordingly,  
10 Skechers is entitled to injunctive relief and to recover Brooks’ profits, actual  
11 damages, enhanced profits and damages, costs, and reasonable attorney’s fees under  
12 15 U.S.C. §§ 1114, 1116 and 1117.

### 13 **SECOND CAUSE OF ACTION**

#### 14 **(Federal Trademark Infringement and Willful Infringement** 15 **of a Registered Mark – Lanham Act § 32, 15 U.S.C. § 1114)**

16 40. Skechers hereby incorporates by reference the above allegations to this  
17 complaint as if set forth fully herein.

18 41. As set forth herein, Skechers owns valid U.S. Trademark Registrations  
19 for the “S” Marks and the Skechers Mark.

20 42. Brooks has used in commerce in the United States spurious marks that  
21 are identical with, or substantially indistinguishable from, the Skechers “S” Marks  
22 (including the “S” characters of the Skechers Mark) without Skechers’  
23 authorization, and in connection with the same goods described in Skechers’ federal  
24 registrations for those marks.

25 43. Brooks’ use of such spurious marks on the Infringing Footwear that  
26 are identical to, or substantially indistinguishable from, the products on which the  
27 “S” Marks and the Skechers Mark appear falsely represents that Brooks’ goods are  
28



1 coming from or authorized by Skechers and places beyond Skechers' control the  
2 quality of goods offered and sold under the Skechers' various marks.

3 44. Brooks' unauthorized use of spurious marks that are identical to, or  
4 substantially indistinguishable from, the "S" Marks (including the "S" characters of  
5 the Skechers Mark) in connection with the promotion and sale and distribution of  
6 footwear is likely to cause confusion, mistake, or deception as to the source or  
7 sponsorship of Brooks' goods, and is likely to deceive the public into believing that  
8 Brooks' goods come from Skechers, are sponsored, endorsed or approved by  
9 Skechers, are subject to Skechers' quality control measures, or are otherwise  
10 associated with Skechers.

11 45. Upon information and belief, Brooks' conduct as described herein has  
12 been intentional, reckless and willful.

13 46. Brooks' use of marks identical to, or substantially indistinguishable  
14 from, the "S" Marks (including the "S" characters of the Skechers Mark) in the  
15 manner described herein constitutes use of counterfeit marks, as that term is defined  
16 in section 34(d)(1)(B) of the Lanham Act, 15 U.S.C. § 1116(d)(1)(B), and Brooks is  
17 accordingly liable under the anti-counterfeiting provisions of 15 U.S.C. § 1114(1).

18 47. Brooks has caused and, unless enjoined by this Court, is likely to  
19 continue causing substantial injury to the public and to Skechers, which has no  
20 adequate remedy at law, and Skechers is entitled to injunctive relief, an accounting  
21 for Brooks' profits, actual damages, enhanced profits and damages, costs and  
22 reasonable attorney's fees under 15 U.S.C. §§ 1114, 1116 and 1117. Additionally,  
23 pursuant to 15 U.S.C. § 1117(b), Skechers is entitled to trebling of the greater of  
24 Brooks' profits or Skechers' damages, and to prejudgment interest. Alternatively,  
25 pursuant to 15 U.S.C. § 1117(c), Skechers is entitled to recover statutory damages  
26 for Brooks' willful use of counterfeit marks.

**THIRD CAUSE OF ACTION**

**(Federal Unfair Competition – Lanham Act § 43(a), 15 U.S.C. § 1125(a))**

48. Skechers hereby incorporates by reference the above allegations to this complaint as if set forth fully herein.

49. Brooks' use of confusingly similar imitations of the "S" Marks (including the "S" characters of the Skechers Mark) has caused and is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Brooks' goods are offered, manufactured, or distributed by Skechers, or are affiliated, connected, or associated with Skechers, or have the sponsorship, endorsement, or approval of Skechers.

50. Brooks has made false representations, false descriptions, and false designations of its goods in violation of 15 U.S.C. § 1125(a). Brooks' activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of the public and members of the trade, and, additionally, injury to Skechers' goodwill and reputation as symbolized by its exclusive use of the "S" Marks (including the "S" characters of the Skechers Mark), for which Skechers has no adequate remedy at law.

51. Upon information and belief, Brooks' conduct as described herein demonstrates an intentional, willful and malicious intent to trade on the goodwill associated with the "S" Marks and the Skechers Mark to the substantial and irreparable injury of Skechers.

52. Brooks' conduct has caused and, unless enjoined by this Court, is likely to continue causing, substantial injury to the public and to Skechers, which has no adequate remedy at law, and Skechers is entitled to injunctive relief, an accounting for Brooks' profits, damages, costs and reasonable attorney's fees under 15 U.S.C. §§ 1114, 1116 and 1117.

**FOURTH CAUSE OF ACTION**

**(Federal Trademark Dilution – Lanham Act § 43(a), 15 U.S.C. § 1125(c))**

53. Skechers hereby incorporates by reference the above allegations to this complaint as if set forth fully herein.

54. Skechers has exclusively and continuously promoted and used its registered “S” Marks and the Skechers Mark in the United States for over 30 years. As a result, the “S” Marks and the Skechers Mark have become famous and well-known symbols of Skechers and its products among the general public in the United States, and they became so before Brooks began advertising, promoting, distributing, or offering for sale the Infringing Footwear.

55. Brooks is making use in commerce of confusingly similar imitations of Skechers’ famous “S” Marks (including the “S” characters of the Skechers Mark) that dilute and are likely to dilute the distinctiveness of the “S” Marks and the Skechers Mark by eroding the public’s exclusive identification of these marks with Skechers, degrading the positive associations and connotations of these marks, and otherwise lessening the capacity of these marks to identify and distinguish Skechers’ goods.

56. Brooks’ actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the “S” Marks (including the “S” characters of the Skechers Mark) or to cause dilution of those marks to the great and irreparable injury of Skechers.

57. Brooks has caused and, unless enjoined by this Court, is likely to continue causing irreparable injury to Skechers’ goodwill and business reputation, and dilution of the distinctiveness and value of the famous “S” Marks and Skechers Mark in violation of 15 U.S.C. § 1125(c). Accordingly, Skechers is entitled to injunctive relief, an accounting for Brooks’ profits, actual damages, enhanced profits and damages, costs and reasonable attorney’s fees under 15 U.S.C. §§ 1125(c), 1116 and 1117.

**FIFTH CAUSE OF ACTION**

**(Trademark Dilution and Injury to Business Reputation Under State Law)**

58. Skechers hereby incorporates by reference the above allegations to this complaint as if set forth fully herein.

59. For over thirty years, Skechers has exclusively and continuously promoted and used the “S” Marks and the Skechers Mark in the United States. The “S” Marks and the Skechers Mark are well-known symbols of Skechers and its products among the general public in the United States generally, and in each of those states and territories particularly, well before Brooks began using its “S” Mark.

60. Brooks is making use in commerce of confusingly similar imitations of Skechers’ “S” Marks (including the “S” characters of the Skechers Mark) that dilute and are likely to dilute the distinctiveness of the “S” Marks and the Skechers Mark by eroding the public’s exclusive identification of these marks with Skechers, degrading the positive association and prestigious connotations of these marks, and otherwise lessening the capacity of the “S” Marks and Skechers Mark to identify and distinguish Skechers’ goods.

61. Brooks’ actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the “S” Marks and the Skechers Mark, or to cause dilution of these marks, to the great and irreparable injury of Skechers.

62. Brooks has caused and, unless enjoined by this Court, will continue to cause irreparable injury to Skechers’ goodwill and business reputation, as well as dilution of the distinctiveness and value of the “S” Marks and Skechers Mark in violation of the California antidilution act, Cal. Bus. & Prof. Code § 14247; as well as the antidilution laws of several other states, including Alabama, Ala. Code § 8-12-17; Alaska, Alaska Stat. § 45.50.180; Arizona, Ariz. Rev. Stat. Ann. § 44-1448.01; Arkansas, Ark. Code Ann. § 4-71-213; Connecticut, Conn. Gen. Stat. Ann

§ 35-11i(C); Delaware, Del. Code Ann. Tit. 6, § 3313; Florida, Fla. Stat. Ann. § 495.151; Georgia, Ga. Code Ann. § 10-1-451; Hawaii, Haw. Rev. Stat. Ann. § 482-32; Idaho, Idaho Code Ann. § 48-513; Illinois, 765 Ill. Comp. Stat. Ann. 1036/65; Iowa, Iowa Code Ann. § 548.113; Indiana, In. Code 24-2-1-13.5; Kansas, Kan. Stat. Ann. § 81-214; Louisiana, La. Rev. Stat. Ann. § 51:223.1; Maine, Me. Rev. Stat. Ann. Tit. 10, § 1530; Massachusetts, Mass. Gen. Laws Ann. Ch. 110h, § 13; Minnesota, Minn. Stat. Ann. § 333.285; Mississippi, Miss. Code. Ann. § 75-25-25; Missouri, Mo. Ann. Stat. § 417.061(1); Montana, Mont. Code Ann. § 30-13-334; Nebraska, Neb. Rev. Stat. Ann. § 87-140; Nevada, Nev. Rev. Stat. 600.435; New Hampshire, N.H. Rev. Stat. Ann. § 350-A:12; New Jersey, N.J. Stat. Ann. 56:3-13.20; New Mexico, N.M. Stat. Ann. § 57-3b-15; New York, N.Y. Gen. Bus. Law § 360-L; Oregon, O.R.S. § 647.107; Pennsylvania, 54 Pa. Cons. Stat. Ann. § 1124; Rhode Island, R.I. Gen. Laws Ann. § 6-2-12; South Carolina, S. C. Code Ann. § 39-15-1165; Tennessee, Tenn. Code Ann. § 47-25-513; Texas, Tex. Bus. & Com. Code Ann. § 16.29; Utah, Ut. Code Ann. § 70-3a-403; Washington, Wash. Rev. Code Ann. § 19.77.160; West Virginia, W.Va. Code Ann. § 47-2-13; and Wyoming, Wyo. Stat. Ann. § 40-1-115.

63. Skechers, therefore, is entitled to injunctive and equitable relief, damages and costs, as well as, if appropriate, enhanced damages, punitive damages, and reasonable attorney's fees.

### **SIXTH CAUSE OF ACTION**

#### **(Violation of State Unfair and Deceptive Trade Practices Statutes)**

64. Skechers hereby incorporates by reference the above allegations to this complaint as if set forth fully herein.

65. By the conduct described herein, Brooks has been passing off its goods as those of Skechers, causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval of Brooks' goods by Skechers, causing a



1 likelihood of confusion as to Brooks' affiliation, connection, or association with  
 2 Skechers, and otherwise damaging the public.

3 66. Brooks' conduct constitutes unfair and deceptive acts or practices in  
 4 the course of a business, trade, or commerce in violation of the unfair and deceptive  
 5 trade practices statutes of several states, including California; Cal. Bus. & Prof.  
 6 Code § 17200, *et seq.*; Colorado, Colo. Rev Stat. Ann. §§ 6-1-101 to 6-1-115;  
 7 Delaware, Del. Code Ann. Tit. 6, §§ 2531 to 2536; Georgia, Ga. Code Ann. §§ 10-  
 8 1-370 to 10-1-375; Hawaii, Haw. Rev. Stat. §§ 481a-1 to 481a-5; Illinois, Ill.  
 9 Comp. Stat. Ann. 510/1 to 510/7; Maine, Me. Rev. Stat. Ann. Tit. 10, §§ 1211 to  
 10 1216; Minnesota, Minn. Stat. Ann. §§ 325d.43 to 325d.48; Nebraska, Neb. Rev.  
 11 Stat. §§ 87-301 to 87-306; New Mexico, N.M. Stat. Ann. §§ 57-12-1 to 57-12-22;  
 12 New York, N.Y. Gen. Bus. Law § 349; Ohio, Ohio Rev. Code Ann. §§ 4165.01 to  
 13 4165.04; and Oklahoma, Okla. Stat. Ann. Tit. 78, §§ 51 to 55.

14 67. Skechers, therefore, is entitled to injunctive relief and to recover  
 15 damages and, if appropriate, enhanced damages, punitive damages, and reasonable  
 16 attorney's fees.

### 17 **SEVENTH CAUSE OF ACTION**

#### 18 **(Common Law Trademark Infringement and Unfair Competition)**

19 68. Skechers hereby incorporates by reference the above allegations to this  
 20 complaint as if set forth fully herein.

21 69. Brooks' actions constitute common law trademark infringement and  
 22 unfair competition, and have created and will continue to create, unless enjoined by  
 23 this Court, a likelihood of confusion to the irreparable injury of Skechers. Skechers  
 24 has no adequate remedy at law for this injury.

25 70. On information and belief, Brooks has acted with full faith and  
 26 knowledge of Skechers' use of and statutory and common law rights to the "S"  
 27 Marks, the Skechers Mark and various executions thereof, and has done so without  
 28 regard for the likelihood of confusion of the public created by Brooks' activities.

71. Brooks' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the "S" Marks and the Skechers Mark to the great and irreparable injury of Skechers.

72. As a result of Brooks' actions, Skechers has been damaged in an amount not yet determined or ascertainable. At a minimum, however, Skechers is entitled to injunctive relief, an accounting of Brooks' profits, damages, and reasonable attorney's fees and costs. Further, in light of Brooks' deliberate and malicious use of confusingly similar imitations of the "S" Marks (including the "S" characters of the Skechers Mark), and the need to deter Brooks from engaging in similar conduct in the future, Skechers additionally is entitled to punitive damages.

## PRAYER FOR RELIEF

WHEREFORE, Skechers prays that:

1. Brooks and all of its agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for, with, by through or under authority from Brooks, or in concert or participation with Brooks, and each of them, be enjoined permanently from:

a. using the Skechers “S” Marks (including the “S” characters of the Skechers Mark) or any other copy, reproduction, colorable imitation, or simulation thereof on or in connection with Brooks’ goods, including the Infringing Footwear;

b. passing off, palming off, or assisting in passing off or palming off Brooks' goods as those of Skechers, or otherwise continuing any and all acts of unfair competition as alleged herein; and

c. advertising, promoting, offering for sale, or selling the Infringing Footwear or other goods bearing confusingly similar imitations of the “S” Marks (including the “S” characters of the Skechers Mark);

2. Brooks be ordered to cease offering for sale, marketing, promoting, and selling and to recall all products sold under or bearing any identical or confusingly

1 similar imitations of the “S” Marks (including the “S” characters of the Skechers  
2 Mark) that are in Brooks’ possession, custody, or control, or have been shipped by  
3 Brooks or under its authority, to any customer, including but not limited to, any  
4 wholesaler, distributor, retailer, consignor, or marketer, and also to deliver to each  
5 such store or customer a copy of this Court’s order as it relates to said injunctive  
6 relief against Brooks;

7 3. Brooks be ordered to deliver up for impoundment and for destruction, all  
8 footwear, including Infringing Footwear, signs, advertising, sample books,  
9 promotional materials, or other materials in the possession, custody, or control of  
10 Brooks that are found to adopt, infringe, or dilute the “S” Marks (including the “S”  
11 characters of the Skechers Mark) or that otherwise unfairly compete with Skechers  
12 and its products;

13 4. Brooks be compelled to account to Skechers for any and all profits derived  
14 by Brooks from the sale or distribution of the Infringing Footwear and that  
15 Skechers be awarded such profits pursuant to 15 U.S.C. § 1117(a);

16 5. Skechers be awarded all damages caused by the acts forming the basis of  
17 this complaint;

18 6. Based on Brooks’ knowing and intentional use of spurious and/or  
19 confusingly similar imitations of Skechers’ “S” Marks, the damages awarded be  
20 trebled and the award of Brooks’ profits be enhanced as provided for by 15 U.S.C.  
21 § 1117(a) and (b), or alternatively, and at Skechers’ election, pursuant to 15 U.S.C.  
22 § 1117(c), for any goods bearing a spurious mark, Skechers be awarded statutory  
23 damages for Brooks’ willful use of a spurious mark;

24 7. Brooks be required to pay Skechers the costs of this action and Skechers’  
25 reasonable attorney’s fees pursuant to 15 U.S.C. § 1117(a) and the state statutes and  
26 common law cited in this complaint;

27 8. Based on Brooks’ willful and deliberate infringement and dilution of the  
28 “S” Marks (including the “S” characters of the Skechers Mark), and to deter such

1 conduct in the future, Skechers be awarded exemplary and punitive damages;

2 9. Skechers be awarded prejudgment and post-judgment interest on all  
3 monetary awards; and

4 10. Skechers be awarded such other and further relief as this Court may deem  
5 just or proper.

6  
7 Dated: June 28, 2022

O'MELVENY & MYERS LLP

8  
9 By:



10 Daniel M. Petrocelli

11 Attorneys for Plaintiffs  
12 SKECHERS U.S.A., INC. and  
13 SKECHERS U.S.A., INC. II  
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**JURY DEMAND**

Skechers respectfully request a jury trial on all issues triable thereby.

Dated: June 28, 2022

O'MELVENY & MYERS LLP

By:   
Daniel M. Petrocelli

Attorneys for Plaintiffs  
SKECHERS U.S.A., INC. and  
SKECHERS U.S.A., INC. II